

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 771 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF A I MITHAIWALA- ASMAI ABDULHUSEIN

Versus

ASHWINKUMAR L BHATT

Appearance:

MR RJ OZA for Petitioners

MR BIPIN I MEHTA for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/04/2000

ORAL JUDGEMENT

#. The petitioners are the original defendants against whom the respondents-plaintiffs have filed a suit for getting a decree of eviction.

#. The case of the plaintiffs in the suit was that the defendants were negligent in payment of rent and that the

rent was due from 1.1.70 to 31.3.70 and therefore, demand notice was sent and the defendant had not complied with the same and therefore, a suit was filed against the defendant on the grounds of arrears of rent, bonafide requirements of the plaintiffs as well as subletting and also on the ground of nuisance.

#. The defendant appeared in the suit and resisted the suit by filing written statement at exh.16. It was denied that the defendants were in arrears of rent. According to them after the receipt of the suit notice, they had sent MO to the plaintiffs but the plaintiffs refused to accept the same. Regarding nuisance it was pointed out that he was convicted for using the suit premises for illegal purposes. He denied the claim regarding bonafide requirement etc. He also raised a dispute regarding standard rent and filed Civil Misc. Application No. 104 of 1979. Aforesaid Application was consolidated with the suit.

#. The Trial Court framed various issues at exh.18. The Trial Court after recording the evidence and hearing the arguments of both the sides came to the conclusion that the tenant is required to be evicted under section 13(1)(c) of the Bombay Rent Act as he was convicted in a gambling case. Therefore, the decree for possession was passed on the aforesaid ground and all other grounds were negatived by the Trial Court. The Trial Court fixed the standard rent at the rate of Rs.. 26/- p.m. The suit for possession was accordingly decreed and Civil Misc. Application No. 104 of 1979 was also accordingly disposed of along with the suit.

#. Aforesaid decree of the Trial Court was challenged by the petitioner-tenant by way of filing Regular Civil Appeal No. 37 of 1983. Aforesaid appeal was dismissed by the learned District Judge, Bhavnagar on 17.3.1986. Said order of the Appellate Court is impugned in this Revision Application at the instance of the heirs of original defendant-tenant. It seems that during the pendency of the appeal original tenant had already died and therefore, his heirs were brought on record and they continued the proceedings.

#. The only point which is required to be considered in this Revision Application is whether the provisions of section 13(1)(c) of the Act is attracted in the present case or not. Section 13(1)(c) of the Bombay Rent Act reads under:

" 13(1)(c) that the tenant or any person residing

with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighboring occupiers, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes; or"

The Trial Court decreed the suit on the ground that the tenant was convicted for using the premises for immoral gambling purposes as he was found to have been convicted in a gambling case. The Appellate Court has confirmed the aforesaid finding of the Trial Court and it is not in dispute that the tenant was convicted as having found to have been involved in a gambling case. The question which is required to be decided is whether in the facts and circumstances of the case, the decree under section 13(1)(c) of the Bombay Rent Act was required to be passed or not. It is pertinent to note that the defendant himself has stated in his written statement and in his evidence that about 17 years back he was found to have been involved in a gambling case and in that gambling case he was acquitted by the Trial Court but he was convicted by the High Court. Mr. R.J.Oza learned advocate for the petitioner - tenant has argued following points in respect of his contention that the suit of the plaintiffs was required to be dismissed

1. That it was only a solitary incident of playing of cards by the tenants with his friends and that there is nothing on record to show that said conduct amount to causing nuisance to his neighbors or that the premises in question is frequently used for such purpose.
2. That the suit is also required to be dismissed on the ground of delay and laches as the incident in question has occurred more than 12 years ago before the filing of the suit.

#. Mr. Bipin Mehta learned advocate for the respondents on the other hand supported the judgment of both the courts below. According to him, since both the courts have arrived at the finding of fact, this court should not disturb the aforesaid finding in Revision Application.

#. So far as the submission of Mr. Oza on the first point is concerned, the defendant has stated in his evidence at exh.48 that on one Sunday, the defendant was

playing cards with his friends and at that time there was a raid resulted in filing of the case against the tenant and his friends under the Prevention of Gambling Act. In the Trial Court, the defendant was acquitted, however in appeal against the order of acquittal, the defendant was convicted and was awarded imprisonment for one month. In his evidence he has stated that the said incident had taken place at about 16-17 years back. It is argued by Mr. Oza that this was the only solitary incident and that the tenant is not found to have been involved in any other such cases at later point of time. It is also argued by him that there is no evidence to show that because of the so called gambling activity on the relevant date, any disturbance or nuisance was caused to the neighbors. Mr. Oza Has relied upon the judgment of Bombay High Court reported in AIR 1972 (Bombay) 117. In the aforesaid case the tenant was occupying the premises since last 35 years. The wife of the tenant was convicted for the offence under section 66(1)(b) of the Bombay Prohibition Act on 19.7.62. In the kitchen under the table one bottle bearing the label of Black and White Whisky containing .09 liters of illicit liquor was found. The wife of the tenant was convicted under section 66(1)(b) of the Bombay Prohibition Act for possession of illicit liquor and sentence of one day's S.I. and a fine of Rs. 250/- was awarded. The landlord thereafter filed a suit for possession on the ground of conviction of the tenant's wife as the suit premises was found to be used for illegal purposes. The suit was decreed. That the said decree was confirmed by the Appellate Court. However, the High Court in Special Civil Application came to the conclusion that there was no justification for passing the eviction decree. While allowing the Special Civil Application the High Court was of the opinion that mere proof of conviction of an offence alleged to have been committed on the premises alone will not satisfy the requirement of the clause. It was further found that the judgment regarding conviction passed by the criminal court is not admissible in a civil proceeding excepting to prove the fact of conviction or acquittal. The facts constituting the offence and the conviction have to be proved independently. The tenant may not entail forfeiture of tenancy merely by proof of the facts constituting the offence unless it is further shown that the user of the premises for the said offence was a deliberate act and also was in pursuance of some illegal and immoral purpose. In the aforesaid judgment, the High Court also distinguished the judgment given in another case reported in AIR 1955 (Bombay) 111. It was ultimately found that an offence casually and incidentally committed on the premises without there

being any intention of user pursuant to the purposes mentioned there were intended to be covered by the above clause. Even if the single act is found to be sufficient to bring home the guilt to the accused. Said single act alone without the proof of the same having been committed pursuant to some illegal or unlawful purposes will not furnish any cause of action to the landlord for eviction of the tenant. In view of the above observations of the Bombay High Court it was submitted that that in the instant case, aforesaid offence was casually and incidentally committed in the premises in question without there being any intention of using the premises for the purpose of gambling. It is submitted therefore that sub clause (c) of section 13 is not attracted in the facts of the case. It is no doubt true that aforesaid judgment of the Bombay High Court supports the arguments of Mr. Oza. However, in the case reported in AIR 1955 (Bombay) 111 it has been held by the Bombay High Court that when the tenant has been convicted for using the premises for illegal and immoral purposes, then the provisions of section 13(1)(c) of the Act are attracted and whether the use of the premises for illegal or immoral purposes was continuous or frequent is not relevant and therefore, ultimately in the aforesaid judgment the decree for eviction was passed and the same was confirmed by the High Court. Aforesaid judgment which is prior to 1960 is a binding judgment so far as this Court is concerned and therefore even though the premises might have been used only once for illegal purposes then also provisions of section 13(1)(c) of the Act is attracted. Using the suit premises for the purpose of gambling will definitely amount to using the same for illegal purpose which ultimately resulted into conviction of the tenant. In that view of the matter and in view of the judgment reported in AIR 1955(Bombay) 111, I do not find any substance in the argument of Mr. Oza in so far as the first point is concerned. It is irrelevant whether on a solitary time the suit premises was subjected to illegal or immoral use, applicability of mensrea is also not relevant.

#. So far as the argument of Mr. Oza on the second point is concerned, he is on a stronger footing. The conviction of the tenant had taken place on 3.3.1967 when the High Court allowed the acquittal Appeal on the said date. The suit in question was filed on 10.9.1979 i.e. after 12 years and 6 months from the date of the aforesaid conviction. The question therefore, would be whether the suit can be said to be within limitation period for the purpose of evicting the tenant on the

aforesaid ground of conviction. In the case reported in AIR 1987 (SC) 1823 the Apex Court has taken the view that Limitation Act applies to the suit for recovery of possession by the landlord against the tenant. As per the said judgment, the suit for possession of immovable property is required to be instituted within 12 years and Article 66 of the Limitation Act would be applicable to such suits. This Court has also taken the view in the case reported in 39(2) GLR 1650 that the suit to recover possession under the Rent Act is governed by Article 66 of the Limitation Act. The question about application of Limitation Act in Rent Suits therefore, is no longer res integra. The cause of action in the instant case arose on 3.3.1967, the moment the tenant was convicted by the High Court. The ground under section 13(1)(c) was therefore, available to the landlord from the aforesaid date. However, suit was not instituted for a long time and ultimately the same was filed on 10.9.1979. No explanation has been given either in the plaint or in the evidence for such an inordinate delay. It is not even the case of the landlord that he was not aware about the conviction of the tenant. In that view of the matter, the suit so far as section 13(1)(c) is concerned, was hopelessly barred by delay and laches. The landlord has not stated anything explaining the said delay. It seems that since there were some other grounds raised in the suit, aforesaid ground for getting possession on the basis of conviction of the tenant was also pleaded. However, since the landlord has failed to get a decree on other grounds, he is not entitled to get decree for possession on the aforesaid sole ground as the suit was clearly barred by delay and laches. Mr. Mehta for the respondents has argued that this would be a recurring cause of action continued day to day. I do not agree with the said submission because the cause of action for getting a decree for possession under section 13(1)(c) of the Rent Act arose the moment the tenant was convicted. There was no further appeal against the order of the High Court and therefore, the date on which the tenant was convicted, the ground for eviction was available to the landlord. Subsequently at no point of time the tenant was found to have been convicted for any offence. Therefore, it cannot be said that aforesaid incident of conviction is a recurring cause of action. Even otherwise also there was no reason for the landlord to wait for such a long time. The argument of the petitioner therefore, on the aforesaid point is required to be accepted. Mr. Oza has further argued that after the decree of the Trial Court, the original tenant has died and his heirs are occupying the suit premises and the heirs have not committed any act which can attract

the provisions of section 13(1)(c) of the Act. According to him therefore, the heirs of the tenant are not required to be evicted for the aforesaid act of the original tenant. Said argument is required to be rejected straight way because the ground of eviction is required to be taken into consideration at the time of filing of the suit and the death of the original tenant would not change the cause of action as available at the time of filing of the suit. The question therefore is required to be decided about the applicability of the provisions of section 13(1)(c) of the Act at the time of filing of the suit. In view of what is stated above, the Revision Application is required to be accepted by setting aside the decree of the Trial Court as well as of the Appellate Court. The effect of the same would be that the Civil Suit No. 443 of 1979 shall stand dismissed. Rule is accordingly made absolute. No order as to costs.

(P.B.Majmudar.J)

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